

EXHIBIT

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Declaration of Peter C. Salerno
In Support of Defendant Yassin Kadi's Motion
To Exclude the Testimony of Victor Comras

03 MDL 1570

July 31, 2023

Page 1

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2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Case No. 03-MDL-1570 (GBD) (SN)

5 -----x.

6 IN RE: TERRORIST ATTACKS ON
7 SEPTEMBER 11, 2001

8 -----x

9 July 7, 2021

10 9:06 a.m.

11
12 Videotaped Deposition via Zoom
13 of JIMMY GURULE, pursuant to Notice,
14 before Jineen Pavesi, a Registered
15 Professional Reporter, Registered Merit
16 Reporter, Certified Realtime Reporter and
17 Notary Public of the State of New York.

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<p>1 2 A P P E A R A N C E S : 3 ANDERSON KILL P.C. 1251 Avenue of the Americas 4 New York, New York 10020 Attorneys for Plaintiff O'Neill and 5 Plaintiffs' Executive Committee BY: JERRY S. GOLDMAN, ESQ. 6 jgoldman@andersonkill.com 7 MOTLEY RICE, LLC 8 28 Bridgeside Boulevard Mount Pleasant, South Carolina 29465 9 Attorneys for Plaintiffs in Burnett Case and 10 Plaintiffs' Executive Committee for Personal Injury and Death Claims 11 BY: JOHN EUBANKS, ESQ. jeubanks@motleyrice.com 12 ROBERT T. HAEFELE, ESQ. rhaefele@motleyrice.com 13 KREINDLER & KREINDLER, LLP 14 750 Third Avenue New York, New York 10017 15 Attorneys for Plaintiffs' Executive Committee 16 BY: ANDREW J. MALONEY, III, ESQ. amaloneyn@kreindler.com 17 18 LEWIS BAACH KAUFMANN MIDDLEMISS PLLC 1101 New York Avenue NW, Suite 1000 19 Washington, DC 20005 Attorneys for Muslim World League and 20 International Islamic Relief Organization, Dr. Abdullah Al Turki, 21 Dr. Adnan Basha, Dr. Abdullah Al Obaid and Dr. Abdullah Naseef 22 BY: AISHA BEMBRY, ESQ. aisha.bembry@lbkmlaw.com 23 WALEED NASSAR, ESQ. waleed.nassar@lbkmlaw.com 24 25</p>	<p>Page 2</p> <p>1 2 S T I P U L A T I O N S 3 4 I T IS HEREBY STIPULATED AND AGREED by 5 and between the Attorneys for the 6 respective parties hereto that filing and 7 sealing be and the same are hereby waived. 8 I T IS FURTHER STIPULATED AND AGREED 9 that all objections except as to the form 10 of the question, shall be reserved to the 11 time of the trial. 12 I T IS FURTHER STIPULATED AND AGREED 13 that the within examination may be signed 14 and sworn to before any notary public with 15 the same force and effect as though signed 16 and sworn to before this Court. 17 18 19 20 21 22 23 24 25</p>
<p>1 2 A P P E A R A N C E S (Continued): 3 BERNABEI & KABAT PLLC 1400 16th Street NW, Suite 500 4 Washington, DC 20009 Attorneys for Dr. Abdullah Al Turki, 5 Dr. Adnan Basha, Dr. Abdullah Al Obaid and Dr. Abdullah Naseef 6 BY: ALAN KABAT, ESQ. kabat@bernabeipllc.com 7 8 JONES DAY 51 Louisiana Avenue NW 9 Washington, DC 20001 Attorneys for Dubai Islamic Bank 10 BY: GABRIELLE PRITSKER, ESQ. gpritsker@jonesday.com 11 ERIC SNYDER, ESQ. esnyder@jonesday.com 12 13 OMAR T. MOHAMMEDI LLC 233 Broadway, Suite 820 14 New York, New York 10279-0815 Attorneys for World Assembly of 15 Muslim Youth BY: JILL MANDELL, ESQ. 16 jmandell@otmlaw.com 17 SALERNO & ROTHSTEIN 18 221 Schultz Hill Road Pine Plains, New York 12567 19 Attorneys for Yassin Kadi BY: AMY ROTHSTEIN, ESQ. 20 amyrothsteinlaw@gmail.com 21 22 ALSO PRESENT: KEN WILLIAMSON, The Video Technician 23 MICHAEL TOTH, Veritext Concierge Tech 24 25</p>	<p>Page 3</p> <p>1 2 T H E V I D E O T E C H N I C I A N : Good 3 morning, we're on the record at 9:06 a.m. 4 on July 7, 2021. 5 This is media unit 1 of the 6 video recorded deposition of Professor 7 Jimmy Gurule taken by counsel for 8 defendant In re Terrorist Attacks on 9 September 11, 2001, filed in the U.S. 10 District Court, Southern District of New 11 York, Case No. 03-MDL-1570 (GBD) (SN). 12 This deposition is being held 13 on-line as a zoom video conference with 14 all parties appearing remotely. 15 My name is Thomas Devine from 16 the firm Veritext New York and I am the 17 videographer; the court reporter is Jineen 18 Pavesi, also with Veritext New York. 19 I am not authorized to 20 administer an oath, I am not related to 21 any party in this action, nor am I 22 financially interested in the outcome. 23 Counsel appearing remotely will 24 have their appearances noted on the 25 stenographic record.</p>

<p>1 2 MS. BEMBRY: Good morning, my 3 name is Aisha Bembry with the law firm of 4 Lewis Baach Kaufmann Middlemiss and I 5 represent defendants Muslim World League 6 and International Islamic Relief 7 Organization and a number of former 8 secretary generals of those two charities. 9 MR. EUBANKS: My name is John 10 Eubanks, I am representing plaintiffs in 11 the Burnett action, but also on behalf of 12 the Plaintiffs Executive Committees today 13 defending the witness. 14 J I M M Y G U R U L E, 15 having first been duly sworn by a Notary 16 Public of the State of New York, was 17 examined and testified as follows: 18 EXAMINATION BY 19 MS. BEMBRY: 20 Q. Good morning again, Professor 21 Gurule, how are you this morning? 22 A. I'm fine, how are you. 23 Q. Good, thanks. 24 Can you state your full name 25 for the record, please.</p>	<p>Page 6</p> <p>1 GURULE 2 clarify or let me know that you don't 3 understand the question, I would 4 appreciate that, is that okay? 5 A. Yes, I will do that. 6 Q. So if you answer a question, is 7 it understood that you understood the 8 question that I asked, is that fair to 9 say? 10 A. Yes. 11 Q. Okay. 12 Did you take any medication 13 today that would impact your ability to 14 provide truthful testimony here today? 15 A. No. 16 Q. And where are you presently 17 located? 18 A. I'm located in South Bend, 19 Indiana, on the campus of Notre Dame Law 20 School. 21 Q. Are you in your office? 22 A. Yes. 23 Q. Is anyone in your office with 24 you? 25 A. Yes, Ed Marshall is in the</p>
<p>1 GURULE 2 A. My name is Jimmy, J-I-M-M-Y, 3 Gurule, G-U-R-U-L-E. 4 Q. And I asked before we got on 5 the record, is it okay if I refer to you 6 as Professor Gurule? 7 A. Yes. 8 Q. Okay, thank you. 9 You've been deposed before, is 10 that right? 11 A. Yes. 12 Q. So I just want to, since you 13 have been through this before, I just want 14 to go through a few things. 15 As you know, I'll be asking you 16 a number of questions today; I would just 17 ask that before you answer my question, 18 that you just let me finish asking my 19 question, is that okay with you? 20 A. Certainly. 21 Q. And likewise, I will try to 22 remember to let you finish your answer 23 before I move on to the next question. 24 And if you don't understand a 25 question I ask, if you could ask me to</p>	<p>Page 7</p> <p>1 GURULE 2 office, he is one of our IT staff and I 3 had asked him if he would stay in the room 4 just to make sure that there are no 5 technical difficulties. 6 I was particularly concerned 7 about viewing any exhibits and making sure 8 that there were no glitches or problems in 9 being able to do that. 10 Q. Is he assisting you in any way 11 in terms of the substance of your 12 testimony? 13 A. Oh, no, not at all. 14 Q. Do you have a copy of your 15 report in front of you? 16 A. I do have a copy, yes. 17 Q. Do you have any other documents 18 there in front of you? 19 A. There are other documents, not 20 in front of me, no; I have documents on my 21 desk, but not in front of me. 22 Q. Any other documents that you're 23 planning to use for purposes of your 24 deposition today? 25 A. No.</p>

<p style="text-align: right;">Page 30</p> <p>1 GURULE 2 any experience relating specifically to 3 the area of economic sanctions or 4 terrorism financing? 5 A. No. 6 Q. You were sworn into the office 7 as under secretary of Enforcement at the 8 U.S. Department of Treasury in 2001, is 9 that correct? 10 A. Yes. 11 Q. And I understand from your 12 report and reading some of your writings 13 that there is quite a bit of 14 responsibility that comes along with that 15 position. 16 Can you detail for me briefly 17 the various responsibilities that you had 18 and the different Federal law enforcement 19 agencies over which you had oversight. 20 A. At the time the under secretary 21 for Enforcement, and me specifically, had 22 responsibility for several major Treasury 23 Department law enforcement agencies, 24 including the U.S. Customs Service, U.S. 25 Secret Service and Bureau of Alcohol,</p>	<p style="text-align: right;">Page 32</p> <p>1 GURULE 2 laundering based upon my work at the U.S. 3 Attorney's Office in Los Angeles, so I 4 thought that this would be an opportunity 5 for me to continue that interest and work 6 on a much broader national scale. 7 And so I went into the position 8 thinking that that was going to be my 9 priority, you know, that was going to be 10 the top priority that I was going to be 11 focusing on, but of course the events of 12 9/11/2001 changed that, changed those 13 plans dramatically. 14 Q. How did it change it, in what 15 respect? 16 A. Well, after the 9/11 attacks, 17 President George W. Bush declared that the 18 U.S. was now engaged in the global war on 19 terrorism and he stated in one or more of 20 his public addresses that this global war 21 on terrorism was going to implicate, was 22 going to involve, all of the levers of 23 Federal power, including law enforcement, 24 again to prosecute the terrorists that 25 were responsible for the 9/11 attacks, you</p>
<p style="text-align: right;">Page 31</p> <p>1 GURULE 2 Tobacco and Firearms, Office of Foreign 3 Assets Control, Financial Crimes 4 Enforcement Network or FinCEN, the Foreign 5 Law Enforcement, Federal Law Enforcement 6 Training Center and Executive Office of 7 Asset Forfeiture. 8 Q. Anything else? 9 A. No, that was plenty. 10 Q. And I read that when you took 11 the position, you assumed you would be 12 spending most of your time focusing 13 largely on anti-money laundering, is that 14 right? 15 A. That's correct. 16 Q. What did you mean by that? 17 A. Well, I knew when I assumed the 18 position, I knew that the Treasury 19 Department had responsibility for 20 developing and publishing the National 21 Money Laundering Strategy, so it was the 22 Federal government's, so to speak, 23 framework for preventing money laundering. 24 And as I stated earlier, I had 25 a very -- I had an interest in money</p>	<p style="text-align: right;">Page 33</p> <p>1 GURULE 2 know, diplomacy through the State 3 Department, but also the financing of 4 terrorism through the Treasury Department. 5 And that became my primary 6 responsibility, to develop the U.S. 7 government's or to assist in developing 8 the U.S. government's first anti-terrorist 9 financing strategy and to use these vast 10 resources that I was responsible for 11 overseeing, including OFAC and FinCEN and 12 the Secret Service, to develop that plan 13 and to implement that plan. 14 Q. Would you agree that the work 15 and experience that you had in terms of 16 anti-money laundering and what you were 17 envisioning as you were coming into the 18 Treasury, the work that you then largely 19 focused on, which you referenced as 20 anti-terrorism financing, that those were 21 different? 22 A. They're different but related. 23 Q. How so? 24 A. Well, you know, money 25 laundering is -- involves the process of</p>

<p style="text-align: right;">Page 82</p> <p>1 GURULE 2 Q. And you determined that you did 3 not need them in order to form the 4 opinions that you are offering in this 5 case, is that correct? 6 A. I don't know that I consciously 7 made that determination at all. 8 I just was asked to opine on 9 three issues and these are the materials 10 that I relied upon in expressing the 11 opinions on what I had been asked to 12 render an expert opinion on. 13 Q. And you weren't given any 14 documents produced by the defendants in 15 this case, is that right? 16 A. Documents, no. 17 Q. And you didn't ask for any in 18 terms of forming your opinions in this 19 case, is that right? 20 A. That's correct. 21 Q. Did you consider -- strike 22 that. 23 In forming the opinions that 24 you offer in your report dated February 25 1st, 2021, and marked as Exhibit 2032, you</p>	<p style="text-align: right;">Page 84</p> <p>1 GURULE 2 innocence of any individual or entity, is 3 that right? 4 A. Yes. 5 Q. It's not a criminal or a civil 6 action? 7 A. That's correct. 8 Q. There is no requirement that 9 the government establish the existence of 10 evidence that an actual act of terrorism 11 was committed by any individual or entity 12 that is being considered for designation 13 pursuant to Executive Order 13224? 14 A. Yes. 15 Q. And there is no requirement 16 that the government have to demonstrate 17 that an individual that's being considered 18 for designation under Executive Order 19 13224 actually intended to support 20 terrorism in any way, is that correct? 21 A. That's correct. 22 I mean, the designation again 23 falls within the scope of Executive Order 24 13224. 25 Q. And that's a fairly broad</p>
<p style="text-align: right;">Page 83</p> <p>1 GURULE 2 did not consider any underlying evidence 3 pertaining to any specific SDGT 4 designation made pursuant to Executive 5 Order 13224, is that correct? 6 A. Yes. 7 Q. In forming your opinions that 8 are offered in your expert opinion dated 9 February 1st, 2021, and marked as Exhibit 10 2032, you did not consider any underlying 11 evidence pertaining to any specific 12 designation made pursuant to U.N. 13 Resolution 1267, is that correct? 14 A. Yes. 15 Q. You have your report in front 16 of you. 17 MS. BEMBRY: We can take down 18 Exhibit 2033. 19 Q. You note on page 6 of your 20 report that designation as an SDGT is an 21 administrative rather than a criminal 22 action, is that right? 23 A. Yes. 24 Q. And that means that it's not an 25 adjudication process of the guilt or</p>	<p style="text-align: right;">Page 85</p> <p>1 GURULE 2 order, is that right? 3 A. That's right, yes. 4 Q. And the idea of it, the 5 ultimate goal, is one that is 6 preventative, that is, to prevent the use 7 of funds to fuel or further terrorist 8 attacks, is that right? 9 A. Yes. 10 Q. And it is to save lives? 11 A. Yes. 12 Q. And an individual can be 13 designated if there is reason to believe 14 that that entity poses a significant risk 15 for committing acts of terrorism, is that 16 right? 17 A. That's one basis for 18 designation. 19 Q. And there is no requirement of 20 evidence that the individual actually 21 committed an act of terrorism, right, it's 22 the posing a significant risk, do I have 23 that correct? 24 A. Well, you can be designated if 25 you actually, if the individual has</p>

22 (Pages 82 - 85)

<p style="text-align: right;">Page 86</p> <p>1 GURULE 2 actually committed an act of terrorism, 3 but the individual could also be 4 designated if he or she poses a threat of 5 committing acts of terrorism that threaten 6 national security.</p> <p>7 Q. You note in your report, and I 8 refer you to page 4 if you want to look at 9 it, at page 4 you note that, second full 10 paragraph, towards the end of that second 11 full paragraph, "Publicly designating 12 individuals and organizations for asset 13 freeze 'notifies the U.S. public and the 14 world that these parties are either 15 actively engaged in or supporting 16 terrorism or that they are being used by 17 terrorists and their organizations'."</p> <p>18 Did I read that correctly?</p> <p>19 A. Yes.</p> <p>20 Q. What did you mean by being used 21 by terrorists and their organizations, 22 what did you mean by that?</p> <p>23 MR. EUBANKS: Objection to 24 form, mischaracterization.</p> <p>25 A. First of all, it is a quote, it</p>	<p style="text-align: right;">Page 88</p> <p>1 GURULE 2 could be doing it intentionally, 3 knowingly, willfully, or inadvertently, 4 unknowingly.</p> <p>5 Q. And the idea is that Executive 6 Order seeks to cast a wide net so as to 7 disrupt the channels of terrorist 8 financing to save lives, is that fair to 9 say?</p> <p>10 A. Yes.</p> <p>11 Q. You state on page 6, and this 12 is under the section SDGT Designation 13 Process, this is the third sentence under 14 that section, "First, OFAC collects 15 evidence to support the SDGT designation." 16 Did I read that correctly?</p> <p>17 A. Yes.</p> <p>18 Q. Do you mean by that to say that 19 the first step in the process is to look 20 for evidence or, rather, collect evidence, 21 I'm trying to distinguish that between 22 identifying an individual who might be 23 subject to Executive Order 13224 and so I 24 would like to understand, in making this 25 statement, are you saying that the first</p>
<p style="text-align: right;">Page 87</p> <p>1 GURULE 2 is a quote from the Terrorist Assets 3 Report, 18th annual report to Congress on 4 the assets, on assets in the United States 5 of terrorist countries, international 6 terrorists, terrorist program designees, 7 2008, 2009, and so I'm quoting from the 8 Treasury Department report.</p> <p>9 And so for me it could be that 10 these individuals are providing, either 11 knowingly or unknowingly, financial 12 assistance or other support to terrorist 13 or terrorist organizations.</p> <p>14 Q. So your understanding is that 15 an individual who may be unknowingly 16 providing or financing terrorist activity 17 could be subject to designation under 18 Executive Order 13224, is that right?</p> <p>19 A. Yes.</p> <p>20 Q. And by the same token, an 21 individual who may be unwittingly 22 financing terrorism activity could be 23 subject to designation under Executive 24 Order 13224, is that fair to say?</p> <p>25 A. Yes; so it's both, someone</p>	<p style="text-align: right;">Page 89</p> <p>1 GURULE 2 step is not the identification of an 3 individual?</p> <p>4 A. No, I think it would be the 5 identification of an individual, but then 6 the question is, I mean, we need to move 7 beyond or OFAC would need to move beyond a 8 suspicion, suspicion that someone is 9 providing financial assistance or 10 financial support to a terrorist, to 11 whether there's a reasonable basis for 12 believing that that individual falls 13 within the scope of Executive Order 13224 14 for designation.</p> <p>15 And so the starting point of 16 determining whether or not there is 17 sufficient basis, reasonable basis, 18 involves the collection of information.</p> <p>19 So we move from suspicion to 20 reasonable basis and we get to reasonable 21 basis based upon the collection of 22 additional evidence.</p> <p>23 Q. Where does that standard come 24 from, you said reasonable basis, what's 25 the basis of that phrase, reasonable</p>

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<p>1 GURULE 2 basis?</p> <p>3 A. So neither IEEPA or the 4 Executive Order articulates a specific 5 legal standard for designation and so the 6 IEEPA statutes are silent on the matter, 7 the Executive Order is silent on the 8 matter.</p> <p>9 And so I think Congress 10 intended, I don't know if this was 11 intentional or not, but could be that 12 Congress intended to keep this kind of 13 broad and provide flexibility to the 14 executive branch, to the Treasury 15 Department, in making the designation.</p> <p>16 We know a couple of things, as 17 you stated; we know that it's not a 18 criminal determination, you know, so it's 19 not a finding of criminal guilt and so 20 therefore the standard of beyond a 21 reasonable doubt would not be applicable.</p> <p>22 And it's not a civil 23 determination, a civil judgment, you know, 24 finding of liability, and so therefore the 25 preponderance of the evidence standard</p>	<p>Page 90</p> <p>1 GURULE 2 A. Yeah, it's difficult, you know, 3 it's difficult to quantify it, to quantify 4 it, but I would say this; reasonable, you 5 know, the use of the word reasonable 6 suggests an objective basis, so it's not 7 just subjectively, a subjective 8 determination, that someone falls within 9 the scope of Executive Order 13224.</p> <p>10 Instead there has to be 11 objective criteria and objective reason 12 for concluding that, you know, that the 13 person falls within the scope of the 14 Executive Order, so it's objective, it is 15 an objective standard, not a subjective 16 standard, and reasonable basis, you know, 17 captures that objective nature of the 18 standard.</p> <p>19 Q. And what's your basis for 20 saying that it is an objective reasonable 21 standard?</p> <p>22 A. The use of the word reasonable. 23 You know, whenever you see 24 reasonable, you know, in a legal standard, 25 reasonable, you know, suggests, implies,</p>
<p>1 GURULE 2 would not apply, it is an administrative 3 determination.</p> <p>4 And so it's someplace in 5 between; so the standard that was used was 6 reasonable basis.</p> <p>7 Q. When you say someplace in 8 between, in between what?</p> <p>9 A. Well, in between the heightened 10 standard, we have this very high standard 11 in the criminal context of beyond a 12 reasonable doubt, and we have a lower 13 standard in the civil context, in civil 14 litigation, of preponderance of the 15 evidence, and the administrative 16 designation under the Executive Order is 17 neither criminal nor civil, it is 18 administrative and so a different standard 19 is applicable.</p> <p>20 And reasonable basis tries to 21 capture that different standard that is 22 required.</p> <p>23 Q. Is it fair to say that a 24 reasonable basis is a standard lower than 25 the preponderance of the evidence?</p>	<p>Page 91</p> <p>1 GURULE 2 an objective determination.</p> <p>3 So it's a distinction between, 4 you know, subjective, you know, subjective 5 belief versus a reasonable belief.</p> <p>6 So subjective belief is just I 7 believe it, but my belief may not be 8 reasonable, there may not be some 9 objective reason to support my personal 10 belief, and if that's the case, that's a 11 subjective belief, that's not Executive 12 Order 13224.</p> <p>13 Executive Order 13224 does not 14 implicate a subjective, purely subjective, 15 determination or a subjective belief, 16 there must be some objective reason, 17 objective criteria, objective basis, for 18 determining that the individual or entity 19 falls within the scope of the Executive 20 Order.</p> <p>21 Q. And is that basis, the 22 objective basis that you're talking about, 23 is that identified and defined in 24 Executive Order 13224?</p> <p>25 A. No, it's not, nor in IEEPA,</p>

24 (Pages 90 - 93)